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7 MEDJET ASSISTANCE, L.L.C.

8 UNITED STATES DISTRICT COURT  
9  
10 CENTRAL DISTRICT OF CALIFORNIA

11 BETH FRIEDMAN, an individual,  
12

13 Plaintiff,

14 vs.

15 MEDJET ASSISTANCE, L.L.C.,  
16 an Alabama corporation, and  
DOES 1-20,

17 Defendants.  
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**Case No: CV09-07585-MMM  
(VBKx)**

Hon. Margaret M. Morrow

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION *IN LIMINE*  
TO EXCLUDE EVIDENCE  
REGARDING ANY MEDICAL  
OPINIONS REGARDING THE  
TRANSPORT OF WESLEY  
FRIEDMAN MADE BY DOCTORS  
ROTH AND MOLESSO**

Date: November 8, 2010

Time: 10:00 a.m.

Courtroom: 780 (Roybal)

Complaint Filed: September 11, 2009

Trial: January 11, 2011

1 Defendant Medjet Assistance, L.L.C. ("Medjet") hereby respectfully  
 2 submits its opposition to Plaintiff Beth Friedman's ("Plaintiff") Motion *In*  
 3 *Limine* to Exclude Evidence Regarding any Medical Opinions Regarding the  
 4 Transport of Wesley Friedman by Drs. Roth and Mosesso, as follows<sup>1</sup>:

## 5 **I. INTRODUCTION**

6 As part of her desperate campaign to obscure from the jury the substantial  
 7 body of evidence that flatly refutes her claims against Medjet, Plaintiff now  
 8 seeks to exclude all evidence relating to Drs. Roth and Mosesso, the two UPMC  
 9 physicians whom Medjet consulted before offering to transport Plaintiff's son  
 10 via commercial airline with a critical care nurse and a medical escort. This  
 11 time, Plaintiff argues that Drs. Roth and Mosesso should be excluded because  
 12 (1) they are neither designated experts nor percipient experts; (2) they did not  
 13 form any opinions based on their personal perception; (3) their opinions are  
 14 "specialized" knowledge; and (4) the hearsay exception for state of mind has no  
 15 bearing on Rule 703. As detailed below, each of Plaintiff's arguments misses  
 16 the mark (and the point). Accordingly, Plaintiff's Motion should be denied.

## 17 **II. EVIDENCE RELATING TO DRS. ROTH AND MOSESSO'S** 18 **INVOLVEMENT AND DR. ROTH'S CONCLUSIONS IS** 19 **ADMISSIBLE**

20 Drs. Roth and Mosesso each consulted with Wesley's treating physician,  
 21 Mr. Bruce Hodgson, regarding Wesley's condition and treatment, specifically  
 22 for purposes of advising Medjet as to whether Wesley required a medivac  
 23 transport or whether his condition permitted transport by commercial airline.  
 24 Indeed, as the Court pointed out in its Tentative Order on Medjet's Motion for  
 25 Summary Judgment, "[John] Gobbels followed the opinion of Medjet's medical  
 26 consultants (and Wesley's local attending physician) in offering to transport

27 <sup>1</sup> Most if not all of the issues raised by Plaintiff's Motion were briefed in connection  
 28 with Medjet's Motion for Summary Judgment and discussed in the Court's  
 Tentative Order thereon.

1 Wesley on a commercial aircraft.” (Tentative Order, p. 22, n. 76.)

2 Dr. Roth was the first UPMC doctor to consult with Mr. Hodgson  
3 regarding Wesley’s condition. Dr. Roth concluded based on his August 5, 2009  
4 consultation with Mr. Hodgson that Wesley would be able to travel  
5 commercially with an escort so long as his standing x-rays the following day  
6 showed no “deviation from his expected course.” (Tentative Order, p. 22.) As  
7 the Court also noted, Dr. Roth was not on the call the following day when Mr.  
8 Hodgson confirmed to Mr. Gobbels and Dr. Mosesso that, based on his standing  
9 x-rays, Wesley “would not require anything other than a commercial flight.” *Id.*  
10 Finally, the Court noted that Mr. Hodgson’s statement, “coupled with Roth’s  
11 opinion, indicated that commercial transport was appropriate. Gobbels merely  
12 implemented the recommendation of the physicians.” *Id.*

13 Simply stated, Dr. Roth’s perceptions and conclusions (and related  
14 documentation) relating to his consultation with Mr. Hodgson (and Mr.  
15 Gobbels) and Wesley’s ability to fly commercially are admissible for the same  
16 reason Dr. Hodgson’s statements are admissible; namely, “because they are  
17 offered for the purpose of proving their effect on the listener,” Mr. Gobbels.  
18 (Tentative Order, p. 10, n. 33.)<sup>2</sup>

19 As for Dr. Mosesso, it is not clear why Plaintiff is attempting to exclude  
20 an “opinion” that Medjet, the Court and even Dr. Mosesso acknowledge never  
21 existed. It should be noted, however, that the reason Dr. Mosesso never formed  
22 an opinion is that, during their August 7, 2009 consultation, Mr. Hodgson stated  
23 (as reflected in numerous records, including Dr. Mosesso’s notes) that the  
24 Friedman’s had decided not to use Medjet’s services, thereby obviating the need  
25 for Dr. Mosesso to reach or express any conclusion as Wesley’s ability to fly

26 <sup>2</sup> Similarly, the Court already has determined that “the notes made by Gobbels and  
27 other Medjet employees regarding their conversations with Hodgson are admissible  
28 as business records.” (Tentative Order, p. 9, n. 33.) The portions of those notes  
relating to Drs. Roth and Mosesso’s involvement are admissible for the same  
reason.

1 commercially. At the very least, Dr. Mosesso's recollection (and related  
2 documentation) of that consultation is admissible, and Plaintiff does not appear  
3 to argue otherwise. Plaintiff's Motion should be denied.

4 **III. CONCLUSION**

5 For all the foregoing reasons, Plaintiff's Motion *In Limine* to Exclude  
6 Evidence Regarding any Medical Opinions Regarding the Transport of Wesley  
7 Friedman Made by Doctors Roth and Mosesso should be denied.

8  
9 DATED: October 18, 2010

DICKSTEIN SHAPIRO LLP

10  
11 By: 

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13 ASSISTANCE, L.L.C.  
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